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April 6, 2005

VIA ELECTRONIC FILING & HAND DELIVERY

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

**Re: Universal Service Fund – ORS 2006 Petition
Docket No. 1997-239-C**

Dear Mr. Terreni:

Enclosed for filing please find the Petition of the South Carolina Cable Television Association in Support of ORS' Petition and to Raise Additional Issues. By copy of this letter we are serving the same on all parties of record. The original and two copies are provided. Please stamp the extra copy provided as proof of filing and return it with our courier.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/bds
Enclosures

cc/enc: Ms. Nancy Horne (via email)
All Parties of Record (via email & U.S. Mail)

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SOUTH CAROLINA
COMMISSION

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1997-239-C**

IN RE:)	
)	
INTRASTATE UNIVERSAL SERVICE)	PETITION OF
FUND)	SOUTH CAROLINA CABLE
)	TELEVISION ASSOCIATION
)	IN SUPPORT OF ORS' PETITION
)	AND TO RAISE ADDITIONAL
)	ISSUES

INTRODUCTION

Pursuant to 26 S.C. Regs., 103-836(A)(2) and S.C.R. Civ. P. 18, the South Carolina Cable Television Association ("SCCTA") submits this petition in support of the petition of the Office of Regulatory Staff ("ORS") for an order clarifying the Universal Service Fund ("USF") Guidelines for South Carolina and requests that the Commission address additional issues related to administering the USF during its consideration of ORS' petition for a declaratory order.

SCCTA is a nonprofit corporation, organized and existing pursuant to the laws of the State of South Carolina, representing fifteen companies serving 461 communities within South Carolina. SCCTA has participated as a party of record in the Intrastate Universal Service Fund Docket No. 1997-239-C. SCCTA has appealed various orders of the Commission relating to administration of the USF. Those appeals are still pending before the South Carolina Supreme Court or the Circuit Court. SCCTA submits this petition without waiving the issues it has raised in those appeals; the issues which SCCTA raises in this petition are different issues from the issues which are on appeal.

ORS seeks clarification of certain issues that are affecting the administration of the USF and that will impact any adjustments to the USF. The following additional issues also affect the administration of the USF, so SCCTA requests that the Commission consider these issues as it addresses the ORS petition.

WIRELESS REVENUES

1. The first issue is whether wireless revenues should be included for assessment purposes. The ORS petition indicates that the Commission has not yet determined that wireless services should be included in the Fund assessment and that ORS does not seek to raise the policy issue of whether wireless revenues should be assessed intrastate USF. As noted in the Legislative Audit Council's February 2005 *Review of the South Carolina Universal Service Fund*, ("LAC 2005 Report") unlike the majority of state funds, South Carolina does not require wireless carriers to contribute. The PSC determined that there was not enough evidence of competition from wireless carriers in 2001, but the "PSC could reconsider, on its own initiative, contributions by wireless providers, or the Office of Regulatory Staff or a carrier could petition the PSC to require wireless carriers to contribute. Competition from wireless providers is increasing and, as of December 2003, South Carolina had over 2 million wireless subscribers. The result of not requiring wireless providers to contribute is that customers of 'landline' providers pay more than their share to support universal service in the state." LAC 2005 Report, p. 15-16. SCCTA agrees with ORS that the current USF Guidelines do not permit or require the assessment of wireless revenues for the USF. However, the SCCTA believes that it is time for the Commission to revisit the issue.

2. The General Assembly mandated that any company providing telecommunications service contribute to the USF if the Commission determines that the

company provides radio-based local exchange services that compete with local telecommunications services. S.C. Code §58-9-280(E)(3).

3. As noted in the LAC 2005 Report, wireless usage has significantly increased since the USF Guidelines were approved in 2001. According to the FCC, the overall wireless penetration rate in the United States is now at 62% and more than 90% for the U.S. population between the ages of 20 and 49.¹ “Total wireless substitution has grown significantly in recent years....In the *Ninth Report*, we discussed the pressure that wireless growth is placing on companies which offer wireline services. In 2004 these trends continued, as the number of landlines decline by around 1.2 percent quarterly in the second and third quarters of 2004, and wireline long distance voice revenues continued to erode. At the end of 2004, there were more wireless subscribers than wireline in the United States-176 million access lines versus more than 184 million wireless subscribers.”²

4. In South Carolina wireless usage has also increased significantly since the adoption of the guidelines in 2001. Wireless subscribers increased from 1,502,345 in June 2001 to 2,337,367 in June 2004.³

5. The Commission has relied upon evidence of increased wireless availability throughout the state to rule on alternative regulation plans filed by numerous incumbent local exchange carriers pursuant to S.C. Code Section 58-9-576. Commission Order No. 2005-141 relied upon evidence from Hargray Telephone Co., Inc. and Bluffton Telephone Co., Inc. that each of the following wireless carriers has wireless coverage in the Hargray and Bluffton service areas: ALLTEL Communications, Inc. (“ALLTEL”); Cingular Wireless II LLC (“Cingular”);

¹ Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Tenth Report*, FCC 05-173, WT Docket No. 05-71, ¶¶ 195-197 (2005) (“10th Report”).

² *Id.* at 196-197.

³ FCC’s *Trends in Telephone Service*, Industry Analysis and Technology Division Wireline Competition Bureau, Tables Compiled as of April 2005, released June 21, 2005, Table 11.2.

Nextel South Corp. (“Nextel”); Sprint PSC (“Sprint”); SunCom; T-Mobile USA, Inc. (“T-Mobile”), and Celco Partnership, d/b/a Verizon Wireless (“Verizon”). Order No. 2005-141, p. 2-3.

6. Similarly, the Order ruling on the alternative regulation plan of McClellanville Telephone Co., Inc.; Norway Telephone Co., Inc.; St. Stephen Telephone Co., Inc.; and Williston Telephone Co., Inc. (collectively “TDS Companies”) cited evidence that ALLTEL, Nextel, Sprint, and Verizon provide wireless coverage and a good quality of service throughout the TDS Companies’ service areas. Order No. 2005-344, Docket No. 2005-130-C, p. 2. The Order ruling on the alternative regulation plan of Rock Hill Telephone Co., Lancaster Telephone Co. and Fort Mill Telephone Co. (collectively “Comporium Companies”) cited evidence that ALLTEL, Cricket Communications, Nextel, Sprint, SunCom, and Verizon provide wireless coverage and a good quality of service throughout the Comporium Companies’ service areas. Order No. 2005-464, Docket No. 2005-203-C, p. 2-3.

7. Based upon these alternative regulation dockets, the Commission has already determined that wireless carriers are providing competitive local services in South Carolina. While, pursuant to S.C. Code Section 58-9-576(A), the determinations made by the Commission in these alternative regulation dockets are not sufficient alone to require the Commission to require wireless revenues to be assessed, those findings are strong support for the proposition that the Commission should schedule a hearing to address the issue. In order to fairly allocate the cost of universal service to include an increasing wireless penetration into South Carolina, the Commission should require wireless providers to contribute to the fund. The SCCTA believes that there is ample evidence to support the Commission’s reviewing the issue at this time. Pursuant to S.C. Code Section 58-9-280(E)(3) the Commission should give notice that this

issue will be addressed and schedule a hearing to develop a full record upon which to make a decision.

ANNUAL EXAMINATION OF COSTS

8. The current USF guidelines do not comply with the statutory requirements regarding the size of the fund and the oversight of the fund by the Commission and ORS.

The size of the USF shall be determined by the commission and shall be the sum of the difference, for each carrier of last resort, between its costs of providing basic local exchange services and the maximum amount it may charge for the services. The commission may use estimates to establish the size of the fund on an annual basis, provided it establishes a mechanism for adjusting any inaccuracies in the estimates.

S.C. Code Section 58-9-280(E)(4) (emphasis added). This provision contemplates and requires that the Commission will review the size of the USF on an annual basis by reviewing, for each carrier of last resort, its relevant costs and charges. The requirement of an annual review of costs is reinforced by the provisions of S.C. Code Section 58-9-280(E) subparts (5) (requiring a carrier of last resort to apply for support with a demonstration of the amount of the difference between its relevant costs and charges); and (7) (giving the Commission the authority to make changes in the distribution levels “based on yearly reconciliations”). The current guidelines do not provide for such oversight. Some carriers of last resort have not had any such review of costs and charges since the USF was first established. SCCTA submits that the guidelines should be revised to be consistent with the statutory requirements.

BUNDLED SERVICES

9. The Commission should investigate the question of whether any carriers of last resort are receiving USF support based on access lines which are sold as part of a package of bundled services. S.C. Code Section 58-9-280(E) provides that the USF is to be used to support the universal availability of basic local exchange service and pursuant to S.C. Code Section 58-9-


280(E)(8) the definition of services which can be supported by the USF can only be expanded after a hearing specifically addressing that issue. No such hearing has been held and bundled services should not be subject to support. The SCCTA believes that carriers of last resort should not be receiving support for access lines which are sold as part of a bundle of services and that the guidelines should be revised to address this issue.

CONCLUSION

Due to the rapidly changing telecommunications market, the SCCTA requests that the Commission consider assessing wireless revenues for inclusion in the USF; that the Commission revise its guidelines to be consistent with statutory requirements relating to annual reviews of costs and charges; and that the Commission revise its guidelines to address the issue of whether access lines which are sold as part of a bundled of services should be eligible for support from the USF. The SCCTA respectfully requests that the Commission address these additional issues related to administering the USF during its consideration of the ORS petition for a declaratory order.

Dated this 5th day of April, 2006.

ROBINSON MCFADDEN & MOORE, P.C.

By: 
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Association

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 1997-0239-C**

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SC PUBLIC SERVICE
COMMISSION

In Re:

Proceeding to Establish Guidelines
for an Intrastate Universal Service
Fund

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) **CERTIFICATE OF SERVICE**
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This is to certify that I am a paralegal in the firm of Robinson, McFadden & Moore, P.C., that I have this day caused to be served upon the persons named below the **Petition of South Carolina Cable Television Association in Support of ORS' Petition and to Raise Additional Issues** in the above captioned matter by placing a copy of same in the United States Mail, postage prepaid, in envelopes addressed as follows:

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ROBINSON, MCFADDEN & MOORE, P.C.

A handwritten signature in cursive script, reading "Toni Hawkins", is written over a solid horizontal line.

Toni Hawkins, Paralegal
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Columbia, South Carolina

April 5, 2006